Supreme Court, U.S.
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No. 99-114

In The

Supreme Court of the United States

ROBERT LOUIS QUALIA,

Petitioner,

v.

THOMAS M. QUALIA
AND JOHN QUALIA,

Respondents.

**On Petition For Writ Of Certiorari
To The Court Of Appeals
Of The Fourth Court Of Appeals
District Of Texas In San Antonio, Texas**

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DROUGHT, DROUGHT & BOBBITT, L.L.P.
112 East Pecan, 27th Floor
San Antonio, Texas 78205
Telephone: (210) 225-4031
Facsimile: (210) 222-0586

JAMES L. DROUGHT
Counsel of Record
CALHOUN BOBBITT
Of The Firm

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Now come Respondents, Thomas M. Qualia and John Qualia, and respectfully submit their Brief in Opposition to the Petition for Writ of Certiorari to the Court of Appeals of the Fourth Court of Appeals District of Texas, filed by Robert Louis Qualia, Petitioner, and pray that it be denied.

PRELIMINARY MATTERS

Respondents do not disagree with Petitioner's citation to the opinion below, or to the statement of jurisdiction, except insufficient attention is given to the Order of the 63rd Judicial District Court of Texas dated August 29, 1991, and the Judgment that was actually rendered (Appendix 35a) of which Petitioner seeks review.

CONSTITUTIONAL PROVISIONS

Petitioner was afforded due process of law, his mischaracterization of the proceedings below to the contrary notwithstanding.

STATEMENT

Petitioner refers to "entry of final orders in the probate court approving Robert's [that is Petitioner's] final account and distribution of the estate . . . " Petitioner fails to recite the fact that these so called "orders" were routine and uncontested and did not result from any proceeding in which the claims of Respondents were heard.

It is also important for the Court to know, in case it does not, that the fact that the answer filed by Petitioner, and which was his only answer at the time of the August 29, 1991, order striking it and entering default judgment for Petitioner's refusal to engage in discovery was, indeed, a mere "general denial" allowed by Rule 92 of the Texas Rules of Civil Procedure, only placing in issue the general allegations made by Respondents, but that situation was strictly the choice of Petitioner. Rules 93 and 94 of the Texas Rules of Civil Procedure allowed him, if he wanted to, to allege affirmative defenses. His failure to do so was his choice, and not the choice of Respondents or the Court. Therefore, when he suffered default judgment on the conversion claims against him, his lack of pleading of affirmative defenses was completely within his own control.

By far the most important mischaracterization of the record by Petitioner needing correction, because it is dispositive of his Petition, is his statement at page 3 of his Petition that his affirmative defenses were stricken and he was denied judgment on them. Pre-trial and post-trial pleadings and orders are often of interest, but in this case there was a Judgment. Petitioner includes the Judgment

at page 35a of his Petition. The Judgment says, at page 36a:

> It is, therefore, ORDERED that Defendant's Motion for Judgment notwithstanding the verdict and Defendant's objections to Plaintiff's Motion for Judgment *are GRANTED* with respect to the breach of fiduciary duty and the negligence claims against Robert Qualia (special issues number 4-12) on the ground that said claims are barred under the doctrine of res judicata by the judgment and cause number 880, in the County Court of Law, Val Verde County, Texas, styled *Thomas M. Qualia and John Qualia vs. Robert Qualia, Independent Executor of the Estate of Kathleen Qualia, Deceased, and Robert Qualia and by the statute of limitations.*

That is the end of it. Mr. Qualia's entire Petition to this Court is illusory. Not only was he not denied his affirmative defenses, he was awarded judgment upon them.

The post-trial order was worded too broadly, but it did not alter or amend the judgment granting relief to Petitioner or refusing Respondents any of the relief they received by the jury verdict upon any of the claims they made other than conversion, and Petitioner does not seriously contest that he justly suffered default judgment on those claims.

The San Antonio Court of Appeals had no difficulty in discerning this, and in affirming the judgment of the District Court, and the Texas Supreme Court denied review.

That is the correct statement of the proceedings in the Texas Courts.

REASONS FOR DENYING THE PETITION

What Respondents have stated above, and Petitioner cannot deny, is all that is needed to deny the Petition.

The issue raised by Petitioner is not presented by the record, and the matters which he states denied him due process never occurred.

At the risk of repetition, not only was Petitioner allowed his affirmative defenses on all issues except conversion, they became the basis for judgment in his favor. With respect to conversion, the operative order struck his answer and granted default judgment *before* he plead any affirmative defenses. That order has withstood scrutiny under *Transamerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913 (Tex. 1991). There is no constitutional right to plead and try affirmative defenses *after* a default judgment has been rendered.

In essence, Petitioner claims that his affirmative defenses were stricken on account of refusal to make discovery on matters unrelated to his affirmative defenses, and that sanctions could only constitutionally be directed to matters affected by the discovery abuse, citing cases such as *Insurance Corp. Ireland, Ltd. v. Compagnie Des Bauxites Des Juinee*, 102 S. Ct. 2099 (1982).

Whatever the merits of the argument may be in theory, they are not present here.

The operative order of the state District Court is found at Appendix page 69a, which (1) struck Petitioner's answer and (2) rendered an interlocutory default judgment against Petitioner "on claims of conversion," and (3) left damages for trial.

The answer stricken by this order was merely a general denial. He had not plead any affirmative defenses. He could have. The District Court did not strike any affirmative defenses, notwithstanding Petitioner's protestations to the contrary.

Therefore, Petitioner is in the completely untenable position of arguing that he had a constitutional due process right to file a new answer, for the first time containing affirmative defenses, to a claim upon which he had already suffered default judgment. It should go without saying that once an interlocutory default judgment has been granted, and presuming it was properly granted, the party against whom it was granted has no further right, constitutional or otherwise, to file further answers or raise defenses. Texas law says so, and there are no opposite decisions of this or any other court. *See, e.g., Brantley v. Etter*, 662 S.W.2d 752 (Tex. App. – San Antonio 1983, writ ref'd n.r.e.); *City of Dallas v. Cox*, 793 S.W.2d 701 (Tex. App. – Dallas 1990, no writ); *Buttrill v. Occidental Life Insurance Co.*, 45 S.W.2d 636 (Tex. Civ. App. – Dallas 1931, no writ).

Thus, the real issue can only be whether the Texas court committed an abuse of discretion in its order of August 29, 1991. Petitioner barely raises the issue, which is understandable, given the fact it was decided against him twice by a Texas Court of Appeals, on mandamus

and on conventional appeal. These holdings applied the scrutiny required by *Transamerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913 (Tex. 1991), which clearly satisfies the due process requirements enunciated by the Supreme Court of the United States, and found the District Court's action within its discretion, given the fact that the sanctions were imposed only after three hearings held by it to give Petitioner the opportunity to comply with proper discovery requests. Petitioner does not even argue that the discovery requests involved were not directly related to the conversion claims, or that he chose to stand in contempt of them.

Petitioner attempts to cloud and confuse the simple issue by reference to proceedings, pleadings and orders which occurred after the order of August 29, 1991, and the real Judgment in the case (Appendix 35a). However, this Court will readily see, through the final Judgment, that the sum total and end result of everything was that the District Court sustained and maintained the order of August 29, 1991, but otherwise administered no further sanctions and permitted Petitioner to answer, and interpose affirmative defenses, to all of Respondents' causes of action except the conversion claims originally stricken.

This Court will also see that the final judgment complained of *granted* Petitioner's Motion for Judgment Notwithstanding the Verdict on the non-conversion causes of action because of his affirmative defenses.

In the end, Petitioner's argument is insidious. A defendant in a lawsuit should not be permitted to arrogate to himself the decision simply to refuse to furnish

discovery on the merits of the case, and then demand the right to present all of his defenses.

In summary, the judgment against Petitioner was for conversion. His answer to that claim which consisted only of a general denial, and no affirmative defenses, was stricken, and a default judgment rendered on liability on that claim only. Thereafter, Petitioner was allowed to raise his defenses to every other claim. He did so, and actually prevailed upon them. The trial court ultimately did not strike any affirmative defenses to any claims. It only granted default judgment on the conversion claim, which was directly related to the discovery Petitioner refused to provide.

The Petition should be denied.

CONCLUSION

For the reasons stated, Respondents, Thomas M. Qualia and John Qualia, respectfully pray that the Petition for Writ of Certiorari of Robert Louis Qualia be denied.

Respectfully submitted,

DROUGHT, DROUGHT & BOBBITT, L.L.P.
112 East Pecan, 27th Floor
San Antonio, Texas 78205
Telephone: (210) 225-4031
Facsimile: (210) 222-0586

JAMES L. DROUGHT
State Bar No. 06135000
CALHOUN BOBBITT
State Bar No. 02530700